Counsel for the defendants submits that the holding over could not create a lease of ten years as such a lease would be void by virtue of section 53(1) of the Conveyancing & Law of Property Act (Cap. 268). If a valid tenancy is created it would be one of month to month because the tenant is paying a rental from month to month and at most a tenancy from year to year.

It is not necessary for me to decide on the point raised. The plaintiff has allowed his right to enforce the contract to become barred with result that he can resist the defendants' claim to possession only by seeking to establish a title, the acquisition of which is forbidden by the Limiation Act. The Act disables him from contesting the defendants' right to possession.

Another defence raised by the defendants is that Clause 3(c) cannot be performed. The defendants submit that since 1960 it is an offence for the defendants to grant a lease for a term exceeding seven years without proper subdivision under the Planning Act, (Cap 279) which came into force in February, 1960.

Section 9(3) of the Planning Act provides:

"No person shall subdivide any land unless –

(a) he has obtained the written permission of the competent authority, and a copy of its written permission has been forwarded by the competent authority to the Collector ....."

Section 9(9) provides:

"Any person who contravenes the provisions of subsection (1) of (3) of the section, is guilty of an offence under this Act and is liable on conviction to a fine ....."

The defendants submit that Clause 3(c) of the said lease is subdivision within the meaning of the definition "subdivide" in section 2(1) of the Act, which reads: –

"a person is said to subdivide land if, by any deed or instrument, he conveys, assigns, demises or otherwise disposes of any part of the land in such a manner that the part so disposed of becomes capable of being registered under the Registration of Deeds Act or in the case of registered land being included in a separate folio of the land register under the Land Titles Act, and "subdivision" shall be construed accordingly: Provided that a lease for a period not exceeding seven years without the option of renewal or purchase shall not be deemed to be a disposal within the meaning of this definition;

The plaintiff contends that the defendants are not precluded from granting a further lease by the Planning Act. He submits that the said lease when originally granted having been capable of and having been registered under the Registration of Deeds Act was not a lease which "becomes" capable of being registered under the Registration of Deeds Act as a result of the disposal within the meaning of the Planning Act. I am unable to accept this submission.

The plaintiff then argues that the defendants could and should have applied for written permission for subdivision and that such written permission would have been granted if applied for.

It seems to me that it was never in the contemplation of the parties that subdivision should be applied for in respect of the said premises. The plaintiff says that the defendants are required to apply for subdivision of the said premises. That would be a fundamental change in the conditions of the said lease. I am of the view that by virtue of the Planning Act, clause 3(c) is unenforceable as against the defendants and the defendants are released from their obligations thereunder.

In the result the plaintiff's claim must be dismissed with costs. There will be judgment for the defendants in terms of their prayers in District Court Summons No. 4724 of 1977 and costs.

*Claim dismissed.*

Solicitors: *L.A.J. Smith; Wee Swee Teow & Co.*

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## LEONG CHIN KUM v. SELCO (SHIPYARD) PTE. LTD.

**[O.C.J. (Chua J.) August 31, 1982]**

**[Singapore – Civil Suit No. 2995 of 1977]**

*Labour Law – Employment – Death in the course of employment – Claim by widow of deceased employed – Whether there was breach of statutory duty on employers' part – Civil Law. Act (Cap. 30) – Factories Act 1973.*

*Tort – Negligence – Death in the course of employment – Whether employers were in breach of their statutory duty to take reasonable care for safety of workman.*

The plaintiff, widow of the deceased employed, brought an action on behalf of herself and her child as dependants of the deceased under the provisions of the Civil Law Act (Cap. 30). The deceased was employed by the defendants as a project supervisor at their shipyard in Jurong. The deceased met his death during the course of his employment by the defendants on October 5, 1976.

The plaintiff alleged that the deceased's death was caused by the negligence of the defendants, their servants or agent and/or by breach on the defendants' part as employers of the deceased to take reasonable care for the safety of the deceased as their servant or for breach of statutory duty under by the Factories Act 1973.

The evidence revealed that the deceased was a technician whose job was the same as that of the project supervisor. His duties involved the sole and complete charge of the repair of the vessel. If the work entailed the entry into a tank of confined space he would, after he had issued the work orders, personally go to the machinery department to get the fitters to open the manhole first. He would, *inter alia*, go to the safety promoter and ask him to check the tanks for gases. In this case the gas detection report of the safety promoter was addressed to the deceased. It stated that the tanks examined were free from flammable vapours and stated "confirmed fit for hot works, adequate ventilation should be provided during process." The one tank centre that was examined was not Centre Tank No. 5 but Centre Tank No. 6 and the examination was made on October 4, 1976.

On the day of the fatal accident, there were men with tools preparing to open the manhole of Centre Tank No. 5. The deceased was there directing the workers in their work. After the manhole was opened, one Davis and the deceased looked into the tank. Davis observed that there was a bit of water at the bottom and there was sign of rusting. He left the compartment to fetch for a powered blower which was needed to circulate air into the tank to ventilate it. Davis was outside the compartment some three metres away when he heard a yell and returned to the compartment. He saw the deceased lying inside the tank.

**Held**, dismissing the plaintiff's claim: (1) the deceased, a very experienced project supervisor, knew that he needed clearance of the safety promoter and that a powered blower was necessary to ventilate the tank. He knew that a powered blower was coming, yet he wilfully entered the tank alone with no one present in the compartment ignoring all the safety procedures adopted by the defendants in connection with entering a freshly opened tank which contained water and where extensive rusting had taken place;

(2) on the facts, there was no substance in any of the complaints that the employers were in breach of statutory duty and that the breach caused or materially contributed to the death of the deceased;

(3) the accident was caused solely by the negligence of the deceased.

*Case referred to*:–

*Bonnington Castings Ltd.* v. *Wardlaw* [1956] A.C. 613.

CIVIL SUIT.

*H. Cashin* for the plaintiff.

*Tan Tee Seng* for the defendants.

*Cur. Adv. Vult.*

**Chua J.**: The plaintiff is the widow of Sylvester Jasper Monteiro, deceased. She brings this action on behalf of herself and her child as dependants of the deceased under the provisions of the Civil Law Act (Cap. 30).

The deceased was employed by the defendants as a project supervisor at their shipyard at Jalan Samulan, Jurong.

The deceased met his death during the course of his employment by the defendants on October 5, 1976. The plaintiff alleged that the deceased's death was caused by the negligence of the defendants, their servants or agents and/or by breach by the defendants as employers of the deceased to take reasonable care for the safety of the deceased as their servant and/or by breach by the defendants of their statutory duty under the Factories Act, 1973.

The facts are these. On October 4, 1976, Barge 222 was brought to the defendants' shipyard for a survey of the damage. The barge had been chartered and handed back to the owner, Prentis Davis. The deceased was assigned to the barge as project supervisor and was in charge of the actual repair work. Abdullah bin Abdul Wahid, the assistant shipyard manager, was in charge of the estimation of the costs of the repair of Barge 222. On October 4, Abdullah surveyed the outside of the barge and did an estimate of the repairs to be done. Davis wanted to have the bottom plate of the barge renewed. Inside the barge where the plate was to be renewed was a tank – Centre Tank No. 5.

Abdullah handed the estimate to Davis on October 5. In the estimate was included an item of costs to the inside of the barge which Abdullah assumed had to be repaired. Davis disputed the estimate and requested a full internal inspection as well. That would involve the inspection of Centre Tank No. 5. The idea was that Abdullah and the deceased were to do this together in due course.

Centre Tank No. 5 was located in a compartment of the accommodation part (called the porta-camp) of the barge. The floorboard of the compartment had to be removed in order to expose the manhole.

According to Davis (D.W.1) it was in the afternoon of October 5 that the manhole of Centre Tank No. 5 was ultimately found. He entered the compartment, in the afternoon. There was work going on in the compartment. There were men

with tools preparing to open the manhole. The deceased was there directing the workers in their work. After the manhole was opened Davis and the deceased looked into the tank. The deceased lowered an electric light into the tank and Davis observed that there was a bit of water at the bottom, and there was sign of rusting. Davis asked the deceased "Where is the blower?" A powered blower is a fan worked by an electric motor and there is a duct in the fan which you can push into the tank to circulate air into the tank to ventilate it. The deceased did not reply and Davis left the compartment to see if there was anyone around with a powered blower. Davis said that when he left the compartment there was no one in the compartment with the deceased. Deceased was alone. Davis went outside the compartment and stood about three metres from the compartment expecting someone to come with the powered blower. Davis heard a yell and he returned to the compartment. He looked down into the tank and saw the deceased lying inside the tank.

Abdullah bin Abdul Wahid (P.W.4) said in evidence that he knew nothing until 5.30 p.m. on October 5 when he came to know that the manhole cover of Centre Tank No. 5 had been removed and that there had been an accident. He went to the barge. He looked into the Centre Tank No. 5 and saw the deceased lying at the bottom of the tank. He then went with a charge hand to the workshop to get the powered blower and brought it to the barge. At this stage he looked into the tank again and saw two more bodies. He put on the oxygen tank and mask to try to get down into the tank through the manhole. He found it difficult to get down because of one beam. He then went down a rung or two of the ladder leading to the bottom of the tank and the oxygen tank and mask were lowered to him and he strapped the oxygen tank on his back, put on the mask and went down the ladder. Even before he reached the bottom he felt that the oxygen supply was being cut off. He managed to climb up the ladder four or five steps and he was hauled up and he lost consciousness.

Lee Yew Wah (D.W.2), an electrician employed by the defendants, said that he reported for duty on October 5, 1976, at 3.45 p.m. On instructions he went to Barge 222 to install a lamp switch board and a powered blower. He went to the compartment where Centre Tank No. 5 was located. There he saw the deceased, Davis, carpenters and fitters. The carpenters were cutting open the board covering the tank and the fitters were waiting to unscrew the manhole. The deceased was directing the carpenters. After he had installed four lights in the compartment he told the deceased that he needed two men to assist him to bring the powered blower from the electrical department to the barge. The deceased said "O.K." and he left. When he left the compartment the manhole was yet to be opened. He went back to the electrical department to prepare the powered blower and to wait for the two men. While he was waiting he heard the siren and saw many people rushing towards Barge 222 and he learnt that someone had fallen into the tank.

In all four persons had entered Centre Tank No. 5 and collapsed. Three of them died and the fourth person was hospitalised.

At 9 p.m. on October 5, 1976, at the request of the police Phang Sing Eng, Chief Port Chemist, boarded Barge 222 to test the atmosphere of Centre Tank No. 5. There was about six to eight inches of water at the bottom of the tank. There was extensive rusting on the surface of the metal plates inside the tank. The chemist tested the atmosphere of the tank for oxygen content and for toxic gases. The oxygen content inside the tank varied from 8% at the bottom of the tank to 9% at the upper part of the tank. No toxic gases were detected. From the results obtained the chemist was of the opinion that "the accident was caused by the gross deficiency of oxygen content inside the tank in the rusting process in which the oxygen combined with the steel to form iron oxide (rust)."

An autopsy was performed on the body of the deceased. There was an abrasion on the deceased's right forehead 2 x 3 cm. and a bruise on the right mid shin 1½ x 1 cm. The doctor who performed the autopsy reported that the cause of death was asphyxia and said that the external injuries were consistent with a fall from a low height.

The deceased joined the defendants' shipyard in August, 1969, as an Assistant Bench Fitter. He was promoted to Trainee Technician in March, 1971, and a Technician on January 1, 1972.

The evidence of Abdullah (P.W.4) is that the work of a technician is the same as that of a project supervisor. He is given training on his job and all aspects of safety including the entry into a confined space, the use of oxygen mask, the wearing of safety belts and the proper use of safety equipments and ventilation. He is also told that he

is not to go into a tank unless he gets a safety report from the safety promoter.

When a vessel arrives at the yard for repair a project supervisor is assigned to the vessel. He is the person in sole and complete charge of the repair of the vessel. He makes all the decisions including when to enter a confined space. He would liaise with the heads of the various departments regarding the repair jobs that have to be done.

If the work entails entry into a tank or confined space he would, after he had issued the work orders, personally go to the machinery department to get the fitters to open the manhole first. Then he would go to the electrical department to arrange for lighting and powered blower. He will tell them which is the place to be ventilated and where to put up the lights. Then he would go to the safety promoter assigned to the vessel and ask him to check the tanks for gases. The safety promoter would check the tank and submit a report to the project supervisor. The report will state whether the tanks are gas free or not and the ventilation to be provided.

In this instance the gas detection report of the safety promoter (AB 14) was addressed to the deceased and signed by Abu Bakar bin Omar, one of the persons who collapsed in Centre Tank No. 5 and who subsequently died. The report stated that four tanks port, four tanks starboard and one tank centre were examined and found to be gas-free. The one tank centre that was examined was not Centre Tank No. 5 but Centre Tank No. 6 and the examination was made on October 4, 1976. The safety promoter expressed the view that the tanks examined were free from flammable vapours and he made the remarks: "confirmed fit for hot works, adequate ventilation should be provided during process."

The evidence of Abdullah (P.W.4) as to the remarks of the safety promoter in AB 14 is this:

"It means it is safe for workers to do hot works in the tank provided ventilation is provided during the process. "Hot works" means involve use of fire, acetylene torch, etc. If no hot works is to be done it would be safe to go into the tank. If no hot works is to be done you don't require ventilation, according to this report. Before such a report is issued the safety promoter, as a matter of procedure, would inspect the tank for gas free and ventilating and when he is satisfied then such a report would be issued. .....

This report is really a clearance from the safety promoter that it was safe to enter the tank. This was the procedure in the yard. A project supervisor would not enter a tank without such a report. "To my knowledge no project supervisor had entered into a tank without such a report."

The last person to see the deceased alive was Davis. It is clear that the deceased could not have fallen into the tank accidentally. The deceased must have entered the tank by himself. The other persons who collapsed in the tank had entered the tank later in an attempt to rescue the deceased.

The deceased was a very experienced project supervisor. The deceased knew that he needed the clearance of the safety promoter, that a powered blower was necessary to ventilate the tank and he knew that a powered blower was coming, yet he wilfully entered the tank alone with no one present in the compartment ignoring all the safety procedures adopted by the defendants in connection with entering a freshly opened tank which contained water and where extensive rusting had taken place.

As to the allegation that the employers were in breach of statutory duty, I find on the facts of this case that there is no substance in any of the complaints. Even if there is any substance in any of them there is no evidence that the breach caused or materially contributed to the death of the deceased. (See *Bonnington Castings Ltd.* v. *Wardlaw).*

This accident was caused solely by the negligence of the deceased. The claim of the plaintiff is dismissed with costs.

*Claim dismissed.*

Solicitors: *Murphy & Dunbar; Allen & Gledhill.*

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## ART TREND LTD. v. BLUE DOLPHIN (PTE.) LTD. & ORS.

**[O.C.J. (Lai Kew Chai J.) September 15, 1982]**

**[Singapore – Civil Suit No. 1804 of 1982]**

*Practice and Procedure – Interim Mareva injunctions – Claim for removal – Hardship to defendants.*

The plaintiffs in this case claimed against the first and second defendants the total sum of US$728,468.65 under bills of exchange drawn by the plaintiffs and accept-